

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BILLY RAY BUTLER §
v. § CIVIL ACTION NO. 6:18cv154
OFFICER YOUNG, ET AL. §

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

The Plaintiff Billy Ray Butler, a former prisoner of the Smith County Jail proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court referred the matter to the Honorable John D. Love, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

After review of the pleadings, the magistrate judge recommended dismissal of the lawsuit because Plaintiff failed to exhaust his administrative remedies. The court has received and considered the Report and Recommendation of the United States Magistrate Judge, along with the record, pleadings and all available evidence.

Plaintiff filed objections to the magistrate judge's Report and Recommendation arguing that there are two separate defendants named Young, but the magistrate judge only named one of them in the Report. While Plaintiff is correct that he sued two separate individuals named Young, he did not exhaust his administrative remedies against any of the Defendants, rendering all of the Defendants amenable to dismissal.

Plaintiff further complained that the Defendants' motion for summary judgment was filed under seal and did not comply with the scheduling order in that it combined arguments concerning exhaustion and arguments on the merits. He does not claim that he did not receive a copy of the Defendants' motion or assert that he did not have ample time in which to respond.

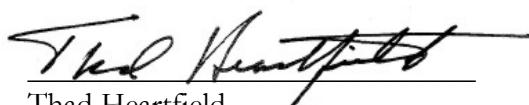
Plaintiff also wrote a letter asserting that the grievance procedure of Smith County did not comply with the exhaustion statute, 42 U.S.C. §1997e, but he cited only the version of the statute which existed prior to its amendment in 1996.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Plaintiff's objections lack merit.

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** and the Defendants' motion for summary judgment (docket no. 32) is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations. All motions not previously ruled upon are hereby **DENIED**.

SIGNED this the 8 day of March, 2019.



Thad Heartfield
United States District Judge